

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 11 TITLED HARBOR SEALS AND BY ADDING SECTIONS 63.1101 THROUGH 63.1107 ALL PERTAINING TO HARBOR SEALS

WHEREAS, the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et. seq.] [MMPA] makes it unlawful to “take” any marine mammal except in accordance with the provisions of the MMPA and 50 CFR Part 216 et. seq.; and

WHEREAS, under the MMPA, “take” is defined broadly to include acts that harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal; and

WHEREAS, the National Oceanic and Atmospheric Administration [NOAA] is charged with the administration and enforcement of the MMPA; and

WHEREAS, the City of San Diego received letters from NOAA dated March 21, 2006 and December 11, 2006 relating to numerous complaints received by NOAA’s Office of Law Enforcement due to alleged harassment of seals occurring at the Children’s Pool Beach; and

WHEREAS, in response to the complaints of alleged harassment, NOAA strongly recommended that the Children’s Pool Beach be closed, or at the very least, the rope barrier replaced to protect the seals and their pups for breeding and nursing purposes; and

WHEREAS, The City Council of San Diego adopted a Resolution on April 19, 2006 [R-301368] and another Resolution on December 5, 2006 [R-302160] authorizing the annual

replacement of the rope barrier at the Children's Pool Beach in order to protect the seals from harassment as defined in the MMPA; and

WHEREAS, on December 15, 2006, emergency authorization was granted to replace the rope barrier at the Children's Pool Beach due to numerous conflicts between humans and humans and humans and seals; and

WHEREAS, since the rope barrier was replaced at the Children's Pool Beach on December 16, 2006, various Departments of the City of San Diego continue to receive complaints of seal harassment and human conflict at the Children's Pool Beach; and

WHEREAS, City lifeguards continue to be asked to diffuse conflicts over the seals at the Children's Pool, which takes them away from providing essential public services as lifeguards by protecting swimmers from danger and drowning; and

WHEREAS, a new provision in the San Diego Municipal Code [SDMC] that makes seal harassment unlawful and defines harassment, would better inform the public on how to model their behavior in accordance with the law, prevent harassment against seals, and reduce instances of conflict among members of the public; and

WHEREAS, a new provision in the SDMC allowing for administrative and other penalties, including injunctive relief to be sought against any person in violation of said provision would provide a clearer local enforcement mechanism for City enforcement authorities to aid in the deterrence of harbor seal harassment and prevention of human conflict surrounding seal treatment; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 3, of the San Diego Municipal Code is amended by adding Division 11 titled Harbor Seals and adding Sections 63.1101 through 63.1107 to read as follows:

§63.1101 Purpose of Regulations Pertaining to Harbor Seals

The purpose of these regulations is to protect the public health, safety and welfare by preventing conflicts relating to the treatment of *harbor seals* in the wild.

§63.1102 Harassment of Harbor Seals is Prohibited

It is unlawful for any *person* to *harass* any *harbor seal* except as authorized pursuant to permits issued by the Secretary of the Interior based on scientific determinations and regulations as set forth in the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et. seq.] or California Fish and Game Code Section 4500.

§63.1103 Definitions

Harbor seal means any animal scientifically classified within the Order of Pinnipedia, the Family of Phocidae, and the Genus and species of *Phoca vitulina*, and any subspecies thereof.

Harass or *Harassment* means any act which has the potential to, or does injure or disturb a *harbor seal* or *harbor seal* stock in the wild by causing disruption of behavioral patterns including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering, even if the disruption does not actually occur. The definition of *harassment*

encompasses potential *harassment* to single *harbor seals*, even if other *harbor seals* in the same location do not appear to be *harassed* by the same activity. Under this Section, all of the *harbor seals* in a population are considered *harassed* if there is the potential for an act to disrupt the behavioral patterns of the most sensitive *harbor seal* in the group. Acts which may constitute *harassment* include, but are not limited to, chasing after, yelling at, throwing objects at, or getting into close proximity to any *harbor seal*.

Person has the same meaning as defined in Section 11.0210 of the San Diego Municipal Code.

§63.1104 Separate Violation of Each Incident

Each act in violation of this Division shall constitute a separate offense.

§63.1105 Enforcement Authority

The City Attorney, the City Lifeguards, the *Director* of the Neighborhood Code Compliance Department, or any other Director authorized by the Mayor, are authorized to administer and enforce the provisions of this Division pursuant to Chapter 1, Article 2, Division 1 of the Municipal Code. The enforcement by City authorities listed herein is separate from and in addition to, but not inconsistent with, the enforcement of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et. seq.] and any other applicable federal statutes by federal authorities and the California Fish and Game Code by state authorities.

§63.1106 Compliance

It is unlawful for any person to refuse to follow or comply with any lawful order, signal or other direction of any enforcement authority listed in this Division of the Municipal Code, or to knowingly provide false information to any enforcement authority listed in Section 63.1105 of this Code, or for any person without lawful authority to deface, injure, knock down or remove any sign, barrier, or warning placed for the purpose of enforcing the provisions of this Division.

§63.1107 Enforcement Remedies

Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. Enforcement authorities for this Division may seek injunctive relief and civil penalties against any person who violates any part of this Division in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.

Remedies listed herein are separate from and in addition to any criminal penalties, civil remedies, fines, injunctive relief, and any other remedies provided under state and federal law.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written copy having been available to the City Council and the public prior to the day of its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Nina M. Fain
Deputy City Attorney

NFM:mm
DATE
Or.Dept:Planning
O-XXXX-XX
MMS#

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

STRIKE OUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Underline

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NFM:mm

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Or.Dept:

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MMS#